

UPDATE

58.com, Inc – Grand Court orders post-valuation date disclosure arising from expert's information request

Update prepared by Simon Dickson and Adam Barrie (Cayman Islands)

In a recent judgment,¹ the Cayman Islands Grand Court ordered a company to give disclosure of post-valuation date information requested by the dissenting shareholders' expert in fair value proceedings. The Court rejected the company's arguments that this information was not relevant and found the company's position to be contradictory and unsustainable given it had already conceded that similar information could potentially be relevant to the question of fair value.

Background

58.com, Inc (the **Company**) is a Cayman Islands company providing online platforms for classified advertisements in the People's Republic of China via website and mobile platforms, including across the real estate, jobs and automotive sectors. The Company was formerly listed on the NYSE and was taken private by way of merger. A petition for the determination of fair value pursuant to section 238 of the Companies Act was issued on 10 November 2020.

It is common in section 238 proceedings for experts to make information requests of the company for the purposes of preparing their reports. In this case, the expert instructed by the dissenting shareholders (the **Dissenters**), made an information request in respect of materials relating to various financing rounds which took place after the valuation date. The financing rounds would obviously require a valuation of the company's assets. The Dissenters' expert took the position that preparation for the financing rounds would have taken place before the valuation date, but that it was only by seeing all of the material in respect of the financing rounds, including those created after the valuation date, that he could determine the accuracy or otherwise of the earlier valuations.

The application

The Company refused to respond to these information requests on the grounds that the requests related to materials which post-dated the valuation date. The Company's position was that unless the Company agrees, the Dissenters' expert is required to demonstrate to the Court's satisfaction that the response to the post-valuation date information requested is likely to be relevant to the issue of fair value.

The Dissenters' position was that there was no such rule; the experts are best placed to assess what information might be relevant to their report and the Court should not second-guess them. Information requests should only be refused where they are oppressive or burdensome.

The Dissenters sought orders that:

- (a) The Company provide written answers and any responsive documents, communications and materials, to each of the information requests submitted to the Company by the Dissenters' expert within seven days.

¹ *In the matter of 58.com, Inc* (Unreported, 2 April 2024). Please see our previous update on 58.com [here](#) which discusses the Grand Court's approach to privilege in appraisal proceedings in the Cayman Islands.

- (b) As regards to any future information requests, the fact that information, documentation or material requested by an expert was created, or relates to a date, after the valuation date was not a basis for the Company objecting to the provision of such information, documentation or material or requiring an explanation of its relevance.

Decision

The Court ordered that the Company provide the requested valuation materials to the Dissenters' expert. The previous authorities supported the fact that there should, in principle, be no objection to providing information after the valuation date.² This is because *'the experts are the best judge of what information is or is not relevant for their purposes'*.³ There may be differing views between experts as to what is relevant and, if agreement cannot be reached, a party can seek a direction from the Court. Of course, if the request for information is abusive or oppressive, the Court will intervene.⁴

The Company had argued that the information requested by the Dissenters' expert was not, as at the valuation date, *'known or knowable'* and not likely to be relevant. The Court held that *'known'* information is anything the company or management would have known about at the valuation date and that *'knowable'* information includes events that happen after the valuation date but were reasonably foreseeable at the valuation date and are relevant to the valuation of the business.

Given that the relevant funding rounds were being considered at or before the valuation date, the Court found they were *'knowable'* and that the Dissenters' expert had adequately explained why he considered this information to be potentially relevant for the purposes of his valuation report. Accordingly, disclosure should be made.

Comment

This decision further demonstrates that it is the experts that are best placed to determine what is relevant to the determination of fair value. Whilst the Court is the ultimate arbiter of relevance, the company should be slow to replace the view of an expert with its own more partisan position.

Contacts



Simon Dickson
Partner
Mourant Ozannes (Cayman) LLP
+1 345 814 9110
simon.dickson@mourant.com



Adam Barrie
Senior Associate
Mourant Ozannes (Cayman) LLP
+1 345 814 6346
adam.barrie@mourant.com

² *JA Solar Holdings Co Ltd* (Unreported, 18 July 2019) at paragraphs 85 – 89.

³ *Integra Group* [2016 (1) CILR 192] at paragraph 11.

⁴ *In re Qunar Cayman Islands Ltd* [2017 (2) CILR 24] at paragraph 37.

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2024 MOURANT ALL RIGHTS RESERVED